IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

Bail Appl..No. 7479 of 2007()

CRIME NO. 185/07 OF PULPALLY POLICE STATION
CMP.1448/2007 of J.M.F.C.-II, SULTHANBATHERY

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PETITIONERS/ACCUSED 9 & 10

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1. SAJEEVAN @ SAJEEVKUMAR,
S/O.K.GOVINDAN, AGED 34 YEARS,
SHYLAJA NIVAS, CHALAPARAMB, THILLAGERI AMSOM,
THILLAGERI.

2. NASSAR, S/O.ABHU, AGED 38 YEARS,
PUTHIYAPURAYIL HOUSE, CHAVASSERI AMSOM,
ULIYIL DESOM, ULIYIL POST.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED
BY THE C.B.C.I.D., CALICUT, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7479 of 2007

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Dated this the 7th day of December, 2007

O R D E R

Application for regular bail. The petitioners are accused 9 and 10. A large consignment of spirit - 8540 litres - was found available in a lorry within the jurisdiction of Pulpally police station in an abandoned stage on 29.6.2007. Seizure was effected. Investigation commenced. Investigation is still in progress. The investigators have not so far come to any specific conclusion about the source or the higher links involved in the transportation. They have already arrayed accused 1 to 15. The petitioners are accused 9 and 10. They were arrested on 12.11.2007. They continue in custody from that date.

2. The learned Prosecutor submits that the prosecution is now working on the theory that accused 8 and 15 had brought the consignment into Kerala from a neighbouring State. Accused 8 and 15 were allegedly present in the vehicle. When the vehicle reached Taliparamba, it is alleged that accused No.8, contrary to

the understanding with accused 15, took the consignment from Taliparamba to Pulpally. This was allegedly done by him on the basis of a conspiracy which was hatched. Accused 9 to 14 as also accused 1 and 2 at the instructions of the 8th accused had allegedly assembled in a lodge at Tellicherry. From there they had proceeded in search of the lorry to Taliparamba and from Taliparamba accused 2 and 9 had got into the vehicle. They took the vehicle to Pulpally. Accused 10 to 14 accompanied the lorry in an Ambassador car. At Pulpally, when efforts to dispose of the article failed, one of the conspirators - A7 - allegedly passed on the information to the police that the vehicle with consignment was available at the place where it was ultimately recovered.

3. The allegation of accused 9 and 10 is that they, in collusion with the co-accused, had carried the consignment from Taliparamba to Pulpally, where the parties attempted to dispose of the same.

4. The learned Prosecutor submits that the investigation is not complete. Important higher links involved in the crime have not been ascertained. Accused No.8 has now been arrested and he is being

handed over to the police custody today. The learned Prosecutor submits that it is expected that better light can be drawn after the interrogation of the 8th accused about the further details of the crime committed. He submits that, at any rate, accused 9 and 10, who had important roles to play in the movement of the lorry with the consignment from Taliparamba to Pulpally, may not be enlarged on bail now.

5. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. At any rate, the role of the petitioners is minimal. They need not be compelled to remain in custody, they having continued in custody from 12.11.2007.

6. In the wake of opposition by the Public Prosecutor regular bail can be granted to the petitioners only if this court is in a position to entertain both the satisfactions contemplated under Section 41A of the Kerala Abkari Act. In the facts and circumstances of this case, I am unable to entertain either of those satisfactions. The mere fact that some of the co-accused, who were arrested, earlier have been granted bail cannot certainly be a sufficient and satisfactory reason to justify

the prayer for release of the petitioners on bail. The learned Prosecutor submits that those accused persons were released on bail either when the period of 60 days had elapsed from the date of filing of the petition or because the Prosecutor did not oppose the application considering the nature of the alleged complicity of such individuals. At any rate, I am satisfied that the mere fact that some of the co-accused have already been released on bail is no reason for this Court to direct release of the petitioners on bail ignoring the mandate of Section 41A of the Kerala Abkari Act.

7. This application is, in these circumstance, dismissed. But I may hasten to observe that the petitioners shall be at liberty to move the court for bail again at a later stage of the investigation, not at any rate, prior to 11.12.2007. The Investigators shall, in the meantime, make every endeavour to complete the investigation.

(R. BASANT)
Judge

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